IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

The General Manager, Northern Railway, Baroda House,New Delhi and Ors. Vs. The Central Industrial Tribunal, Sahdev Marg, Jaipur and Anr.

D.B. SPEICAL APPEAL (W) NO. 138/2007
Under Article 225 of the Constitution of India against the Judgment dated 20.3.1990 passed by the Hon'ble Mr. Justice K.S. Lodha in S.B. Civil Writ Petition No. 1193/1989 The General Manager, Northern Railway and Ors. Vs. The Central Industrial Tribunal and Anr.

Date of Judgment :: 04.04.2007

PRESENT

HON'BLE MR JUSTICE RAJESH BALIA
HON'BLE MR JUSTICE BHANWAROO KHAN

Mr.M.S. Singhvi, for the appellants.
Mr. Nimesh Suthar for Mr. S.N. Trivedi, for the respondents.

BY THE COURT (PER HON'BLE JUSTICE R.BALIA):

Heard learned counsel for the parties.

This appeal is directed against the judgment of the learned Single Judge dated 20.3.1990. The Writ Petition No. 1193/1989 had been filed against the award of the Labour Court dated 20.5.1988 holding the retrenchment of the respondent-workman, whose cause was being

espoused by the Railway Casual Workers Union, to be invalid for want of compliance of the provisions of the Industrial Disputes Act, 1947 (for short 'the Act of 1947' hereinafter). The termination of the service had taken place in the year 1979. The dispute had been raised in September, 1983 and reference has been made in the year 1995. The termination of the respondent-workman Nisar Ahmed was found to be in violation of Section 25-G for the reasons that the persons junior to him were retained in service while his services were dispensed with. Section 25-F was not found applicable in the case of the present respondent-workman.

The retrenchment having been found invalid, by way of relief, the Labour Court directed reinstatement of the workman with full back wages by award under challenge rendered on 20.3.1990. While award of reinstatement has not been interfered with, the amount of backwages has been reduced to 50% from the date of retrenchment. Hence, this appeal.

The learned counsel has confined his contention to the award of backwages. Reinstatement having already taken place and the workman is continuing in service, the same is not challenged in the following circumstances.

Here we may notice that there were three matters between the present appellant-The General Manager, Northern Railway and the workmen working under him whose causes were espoused by the same Union. The three workmen's cases had proceeded almost on similar lines and as per the award of the Labour Court in all the three cases the workmen have been directed to be reinstated with full backwages w.e.f. the date of termination.

Three independent writ petitions were preferred by Northern Railway. Apart from Writ Petition No. 1193/1989, from which the present appeal having been arisen, other two writ petitions were S.B. Civil Writ Petition No. 1194/1989 and S.B. Civil Writ Petition No. 1195/1989. All these three writ petitions were decided by three separate orders on 20.3.1990 and in all these three cases respective workmen have been reinstated. Learned Single Judge in all these cases while upholding the award of reinstatement has reduced the award of backwages upto 50%.

Three appeals were preferred in the year 1990. Out of all these three appeals since the record of the present appeal was not traceable, it was reconstituted vide order dated 5.12.2006

and this could not have been decided earlier for want of availability of the record.

Decision in other two writ petitions viz. S.B. Civil Writ Petition No. 1194/89 became subject matter of D.B. Civil Special Appeal No. 223/1991 and S.B. Civil Writ Petition No.1195/89 became subject matter of D.B. Civil Special Appeal No. 82/1991.

The special appeal No. 82/91 was partly allowed by deleting the award of backwages in its entirety, while sustaining the order of reinstatement on the finding of retrenchment being invalid.

In the Special Appeal No. 223/1991, this Court vide its order dated 4.11.2003 did not allow any backwages from 8.8.1978 to 10.11.1982, that is to say from the date of retrenchment until raising of the dispute no backwages were awarded. In that case, the workman has been reinstated on 22.12.1983 during the pendency of dispute and therefore, the award of full backwages were made from the date of raising dispute until the date of reinstatement.

In the present case, the reinstatement has not taken place during the pendency of

challenge to the termination but has taken place after the award was made, like in the case of D.B. Civil Special Appeal No. 82/1991 decided on 18.9.1995. The facts of the present case are parallel.

In these circumstances, merely because there is distance in time in deciding the appeal because of misplacement of record of this Court ought not be a ground to reach different conclusion as the respondent-workman is sailing in the same boat.

In these circumstances, this appeal is allowed to the extent the challenge is made to the award of backwages by the Tribunal, as by the learned Single Judge since the workman had already been reinstated w.e.f. September, 1989 and award of reinstatement is not interfered with. Apart from not entitlement of any backwages, other benefit shall flow as per the award.

The appeal is accordingly disposed of.

No costs.

(BHANWAROO KHAN),J. (RAJESH BALIA),J.

Rm/-